

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

Mazilia Amisial,

Plaintiff,

v.

Perdue Farms, Inc., a
Maryland corporation,

Defendant.

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C. A. No.

COMPLAINT

COMES NOW, the Plaintiff, Mazilia Amisial, by and through his attorneys, Schmittinger and Rodriguez, P.A., and hereby files this Complaint and requests and represents the following:

I. Jurisdiction and Parties

1. The Plaintiff, Mazilia Amisial, is a resident of the State of Delaware, residing at 805B Moyer Circle East, Milford, Delaware 19963.

2. The Defendant, Perdue Farms, Inc., is a Maryland corporation doing business in Delaware at 255 North Rehoboth Boulevard, Milford, Delaware 19963. Service may be obtained by serving an authorized agent at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. The Defendant, Perdue Farms Inc., is a Maryland corporation registered to do business in the State of Delaware.

4. The Plaintiff has exhausted all administrative remedies available to her prior to the filing of this Complaint.

II. Facts

5. Paragraphs 1 through 4 are realleged and incorporated hereafter by reference.

6. At all times relevant to this Complaint, the Plaintiff has been an eligible employee of the Defendant, as the term is defined by the Family and Medical Leave Act, 29 U.S.C. § 2611(2).

7. At all times relevant to this Complaint, the Defendant has been an employer of the Plaintiff, as the term is defined by the Family and Medical Leave Act, 29 U.S.C. § 2611(4).

8. The Plaintiff was a member of the Defendant's full-time workforce as a line worker at its facilities in Milford, Delaware from July 8, 1986 until her termination on August 29, 2006.

9. On or about August 15, 2006, the Plaintiff was involved in an automobile accident, suffering injuries to her neck and spine.

10. On or about August 18, 2006, the Plaintiff visited Dr. Richard DuShuttle, M.D., because of the injuries she received from the accident.

11. On or about August 18, 2006, Dr. DuShuttle advised the patient to not work for three weeks, pending a follow-up evaluation on September 7, 2006 and provided medical documentation to this effect in the form a no-work note.

12. On or about August 28, 2006, the Plaintiff visited the Perdue Wellness Center, a health-care provision facility operated by the Defendant.

13. At the Perdue Wellness Center, the Plaintiff provided a registered nurse named Tammy with the no-work note provided by Dr. DuShuttle.

14. Tammy informed the Plaintiff that the Defendant no longer accepted medical documentation from Dr. DuShuttle and that the Plaintiff no longer had a job with the Defendant.

III. Count #1: The Family and Medical Leave Act

15. The Plaintiff restates, realleges, and incorporates by reference Paragraphs 1 through 14.

16. Through the actions alleged above, the Defendant has failed and/or refused to provide the Plaintiff with leave entitled to the Plaintiff, in violation of Title 29, Section 2612(a)(1) of the United States Code.

17. Through the actions alleged above, the Defendant has illegally terminated the employment of the Plaintiff, in violation of Title 29, Section 2615(a) of the United States Code.

18. As a result of the Defendant's unlawful conduct, the Plaintiff has suffered a loss of wages and employment.

III. Count #2: Denial of COBRA Continuation Coverage

19. The Plaintiff restates, realleges, and incorporates by reference Paragraphs 1 through 18.

20. Through the actions alleged above, the Defendant has denied the Plaintiff access to continuation coverage by failing to file timely notice of the occurrence of a qualifying event, in violation of Title 29, Section 1166(a)(2).

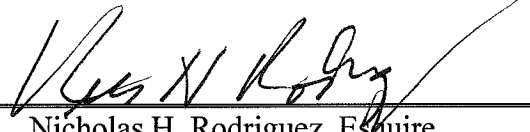
21. As a result of the Defendant's unlawful conduct, the Plaintiff has suffered a loss of her health insurance.

Prayer for Relief

WHEREFORE, the Plaintiff, by and through her attorneys, Schmittinger and Rodriguez, P.A., pray that the Court grant the following relief:

1. Award the Plaintiff all wages and benefits which she has lost as a result of the Defendant's illegal conduct, including payment of interest on all wages and benefits due;
2. Grant the Plaintiff liquidated damages under Section 2617(a)(1)(iii) of the Family and Medical Leave Act, 29 U.S.C. § 2617.
3. Grant the Plaintiff her attorneys' fees, costs and pre-judgment interest.
4. Award to the Plaintiff such other legal or equitable relief as the Court deems just.

SCHMITTINGER AND RODRIGUEZ, P.A.

BY: 

Nicholas H. Rodriguez, Esquire
Bar ID #356
414 South State Street
P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

Dated: 7-01-08

08-402

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Amisial, Mazilia

(b) County of Residence of First Listed Plaintiff Kent
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number) 302-614-0140
Nicholas H. Rodriguez, Esq.
Schmittinger + Rodriguez, P.A.
914 South State Street, Dover DE 19901
Bv ID# 356

DEFENDANTS

Perdue Farms Inc., a Maryland corp

County of Residence of First Listed Defendant Kent
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Bankruptcy	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 425 Bankruptcy	<input type="checkbox"/> 440 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 426 Bankruptcy	<input type="checkbox"/> 450 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 427 Bankruptcy	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 428 Bankruptcy	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 429 Bankruptcy	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 430 Bankruptcy	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 431 Bankruptcy	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 432 Bankruptcy	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 433 Bankruptcy	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 434 Bankruptcy	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 390 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 435 Bankruptcy	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 400 State Reapportionment		<input type="checkbox"/> 436 Bankruptcy	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 410 Antitrust		<input type="checkbox"/> 437 Bankruptcy	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 420 Consumer Credit		<input type="checkbox"/> 438 Bankruptcy	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 430 Consumer Credit		<input type="checkbox"/> 439 Bankruptcy	<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 440 Bankruptcy	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/> 441 Bankruptcy	<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 2601

Brief description of cause:

Failure of employer to honor FMLA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7-01-08

Nicholas H. Rodriguez

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. CA 08-402

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 1 COPIES OF AO FORM 85.

7/2/08
(Date forms issued)

x B. Curt Gruber
(Signature of Party or their Representative)

X R. Curt Gruber
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action